



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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ENVIRONMENTAL
PROTECTION AGENCY

OCT 27 1998

MONTANA OFFICE

Re: U.S. v. Asarco, CV 98-3-H-CCL EPA
Comments on SEP Statement of Work at the
East Helena, Montana Facility

Dear Ted and Peter:

Enclosed please find comments from the U.S. Environmental Protection Agency (EPA) on the Statement of Work (SOW) for the Supplemental Environmental Project as proposed in the Consent Decree referenced above. The comments were prepared by both technical and legal staff in the Region and Headquarters.

If Asarco has any questions regarding the comments or needs any clarification please call me at 202.564.4258.

Sincerely,

Elyana R. Sutin
Senior Enforcement Attorney
Region VIII

Enclosure

cc: ✓ Susan Zazzali - EPA
Judi Kahl - EPA
John Brink - EPA
John Nichols - Asarco
John Moscato - DOJ
Mike Goodstein - DOJ



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Comments on Statement of Work (SOW) for the East Helena Wetlands SEP
Consent Decree Civil Action No. CV 98-3-H-CCL

General:

The SEP needs to be integrated into the time line for the RCRA Facility Investigation (RFI) being done at the East Helena facility pursuant to the above referenced Consent Decree. Contaminated soils remaining in the area should be identified and remediated if necessary prior to implementing either Phase I or Phase 2 of the SEP. The Consent Decree indicates that the "any contaminated soils in these areas will be removed as part of the RCRA Corrective Action...and the SEP shall be implemented in a manner consistent with the completion of the RCRA Corrective Action in the areas of Upper and Lower Lake." (See, p. 60-61 of consent decree). Asarco needs to describe how they will integrate the SEP and RFI activities.

Furthermore, historic sampling results of soils in portions of the area covered by the SEP indicate elevated levels of metals including arsenic and lead (Hydrometrics 1994). It is not clear if these data accurately reflect current conditions because these areas were subsequently disturbed during CERCLA remedial actions conducted at Lower Lake. Contaminated soils remaining in the area should be identified and remediated if necessary prior to implementing either Phase 1 or Phase 2 of the SEP. The current Conditions/Release Assessment Report (CCRA) that Asarco prepared should clarify the extent of data available for this area. If additional soil data is needed, it could be collected as part of the baseline vegetation and wildlife measurements planned as part of the SEP data collection plan, or it could be collected during the RFI (See below).

If Asarco chooses to investigate and remediate the areas covered by the SEP outside of the RFI (that is through implementation of the SEP), soil clean up standards should be developed that are consistent with RCRA requirements to avoid the possibility that Asarco will have to disturb the completed SEP. These issues can be addressed if Asarco agrees to investigate and remediate the areas in a manner that satisfies RCRA corrective action requirements prior to implementing the SEP. Investigation and remediation could occur under the SEP, as an interim measure under the consent decree, or during the RFI.

Specific:

- The placement of approximately 1400 cubic yards of fill material will likely require a Clean Water Act Section 404 permit, 33 U.S.C. §1344, if Asarco intends to discharge fill material in the ponds or redistribute earthen material along the shoreline within the boundaries of waters of the U.S. (See, SOW pp. 1-4, 2-1).
- The SOW does not adequately describe the reasons for the water diversion from Upper Lake to Lower Lake and how it will be operated. The SOW also does not discuss what impacts, if any, this will have on water levels and water quality in both areas. Please describe the necessity and environmental benefit of this structure. (See, SOW pp. 1-6, 2-10).

- The description of the proposed earthwork needs to be more detailed. For instance, the SOW indicates that slopes will be reduced where they exceed 3:1 in steepness but it does not indicate or show the slopes intended to be graded. Furthermore, EPA is concerned that 3:1 is too steep for development of anything more than a narrow wetland fringe along the shoreline. It is more appropriate to be aiming for 10:1 or 15:1 if Asarco wants to develop an emergent wetland around the shoreline. (See, SOW p.2-2).
- The SOW does not adequately describe the thickness or design criteria for the "cap" of coversoil that is intended to be placed over the shoreline. It is also unclear whether the SOW plans to topsoil to within 12-18" above or below the water line. This could make a difference to the plants in the shallow emergent zone. It could also make a difference with respect to water quality, depending on what is in the soil that would be discharged below the waterline. (See, SOW pp. 2-2, 2-7).
- EPA is concerned that the 12" riprap placed on the shoreline area between the coversoil and water line will not allow for proper growth of vegetation. (See, SOW p. 2-2).
- The plantings must be native species planted in a manner that will mimic the nearby native habitats species composition and density. This does not necessarily mean what is presently growing at the site. The SOW should specifically discourage naturalization of "naturalized" non-native nuisance species. Furthermore, where plant materials are being collected for transplanting, EPA requires monitoring of the collection areas to assure that they recover if the collected transplants are large. Small collections, collected within at least 15 feet spacing do not have to be monitored. EPA requires a minimum species survival rate of 70-80% for planted species. (See, SOW, p. 2-5).
- The SOW indicates that prior to revegetation, the area between the lakes will be covered with up to 4-6 inches of suitable coversoil. This seems to imply that it could be a lot less than 4-6 inches. As stated above, without knowing the exact purpose of the cover, the quality of what is underneath it and the quality of the coversoil itself, it is difficult to assess whether or not this is appropriate. (See, SOW p. 2-8).
- The SOW indicates that upland revegetation areas between the lakes and upland inspection sites were identified in January 1997. EPA has not seen the upland inspection sites identified by Hydrometrics. Please provide this information to EPA at your earliest convenience. (See, SOW p. 3-1)
- The Data Collection Plan (DCP) should be more clearly outlined. For instance, it would be helpful to know if the transects in reference areas are intended to cross fairly homogeneous plant communities, or whether they will cross areas that are heterogeneous. This makes a difference, for example, in the plan to disregard species observed in 20% quadrats or less. When there are only 10 quadrats in the sample all it takes is two quadrats to make 20%. If the transect goes from an upland point, across a wetland, to

another upland point, the results may be different than if the transect goes across a more homogeneous or uniform area. (See, DCP p. 1).

- The SOW is unclear on whether baseline measurements will be taken in the treatment areas before or after they are disturbed by earthen work. If it is the former, Asarco should expect the trend of the results to be different than it would be if the earth work is done first and then measure a baseline of bare ground. In the first instance, there will be some existing vegetation to start, it will be wiped out, and then hopefully see it turn into something like the applicable reference area. In the second instance, there will be nothing to start and then hopefully it will turn into something like the reference area. (See, DCP, p. 2).
- As a general rule, EPA likes to see the data reports tabulate the plant species and NWI indicator status so that it is easier to determine whether or not the hydrophytic vegetation criteria for jurisdictional wetlands have been met.
- EPA has concerns regarding the terrestrial wildlife monitoring provisions. The SOW admits that getting statistically meaningful data from a project this small is difficult. The SOW proposes to collect data only from the treatment areas and not from any reference areas. This means that only general trends of wildlife use within the treatment area will be reported and there will be no indication whether this is better or worse than what was there before and no reference area data to use as a goal to measure progress against. The SEP is intended to have ecological benefits and monitoring these benefits is crucial to the success to the project. (See, DCP p. 5).
- The SEP Completion Report should also include water quality data. (See, SOW p.4-1).
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